BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures.	)	WT- Docket No. 05-211

COMMENTS OF ALOHA PARTNERS, L.P.

Aloha Partners, L.P. ("Aloha"), by counsel, submits these comments in response to the Commission's Further Notice of Proposed Rule Making in WT Docket No. 05-211 ("Further Notice").[1] There, the Commission sought specific comment on elements of a proposal raised by Council Tree Communications, Inc. ("Council Tree"). *Further Notice*, at para 1. It also explained that it was "consider[ing] whether we should modify our general competitive bidding rules ("Part 1" rules) governing benefits reserved for designated entities ("DEs") (i.e. small businesses; rural telephone companies and businesses owned by women and minorities." Id.

I. STATEMENT OF INTEREST

Aloha is a *bona fide* DE that is the largest of the Commission's Lower Band 700 MHz licensees. Aloha's qualifications to be a DE have been confirmed by the Commission time and again.

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[1] Implementation of the Commercial Spectrum Enhancement Act, __ FCC Rcd ___, FCC 06-8, 71 Fed. Reg. 6992 (Feb 10, 2006)

Aloha's experience with the Commission's DE rules demonstrates that the program is working largely as intended by Congress. While Aloha is not aligned with any major Wireless carrier, Aloha's general partner has, as a result of the Commission's DE program, been able to obtain financially qualified investors to make it possible to acquire its many licenses.

II. DISCUSSION

A. The Communications Act Requires Designated Entity Programs

When the Congress authorized the Commission to license by auction, it expressly conditioned that authority on DEs "be[ing] ensured the opportunity to participate in the provision of such services."[2] Thus, it is a *sine qua non* for the Commission's auction authority itself. Its existence is not something that Congress left to the discretion of the Commission.

Yet, the Commission does have considerable authority, discretion and control over the nature and structure of the program – so long as it provides the opportunity mandated by Congress. To date, the Commission has, as Congress has demanded, used its expertise and experience with auctions gained over time both to implement a program, then refine it time and again to smooth out unexpected (and largely unforeseeable) wrinkles in the program.[3]

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[2] Sixth Report and Order in PP Docket No. 93-253, 11 FCC Rcd 136,138 (1995), citing to the Omnibus Budget Reconciliation Act, Pub L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312 (1993) (the "Budget Act"), and 47 U.S.C. § 309(j)(4)(D) and 309(j)(3)(B).

[3] The first significant wrinkle appeared before any broadband auctions took place, when the Supreme Court issued its ruling in Adaradand Constructors v. Pena, 115 S. CT 2097 (1995). Whereas that decision required overall revision of the Commission's DE rules, it did not erase the Congress overall mandate to be supportive of designated entities.

Viewed as a whole, the Commission's program has worked well. It has been responsible for a considerable portion of all licenses granted via auctions being licensed to designated entities. Lest there be any doubt on this point, it must be appreciated that, without the program virtually no licenses of any meaningful value would have been awarded to small businesses.

B. Any Flaws with the Commission's Designated Entity Program have been Exaggerated by Critics

The largest, previously existing, flaw in the program (the installment payment process) has long-ago been corrected. Moreover, the "concentration" argument that is at the focus of the Council Tree submission is somewhat misleading. Concentration is a fact of life in the industry and is more extensive outside of the DE program than within it. Even if one takes the position that DE licensees should be viewed as being the same entity as their dominant investors, the DE program serves several public interest functions – in addition to ensuring FCC compliance with the Communications Act. It increases service attention to rural and other second-priority markets for nationwide carriers. It also facilitates involvement by women and minorities in wireless. Lastly, by increasing the number of potential bidders, it adds to the competitive nature of the auctions; increases auction revenues; and adds to the overall competitiveness of the industry.

The original DE program was designed, in part, to help small companies be competitive in the auctions and to not pay as much for less desirable markets. This has worked well, to the extent that small companies have provided the capital, effort and expertise to build out the smaller market and rural areas that are less attractive to the larger companies.

In short, there can be no genuine dispute that (a) the Communications Act requires that the auction process provide meaningful opportunities for designated entities, (b) without a program such as now exists, no such opportunities would exist, and (c) certain core public interest benefits associated with small carrier licensing have been achieved.

C. The Commission Should Move Cautiously as It Revises its Designated Entity Program.

Aloha does not take issue with the core component of the Council Tree proposal, i.e. that material involvement by the largest national carriers should be limited, and submits that the adoption of this proposal could well strengthen the DE program. Yet, the proposed five million dollar revenue cap appears to be lower than appropriate. More importantly, whatever cap is applied should be locked in as of a fixed date. Alternatively, it should be accompanied by an automatic index adjustment to address growth over time. Without such provisions, a safeguard that may be valid today could well turn into an unnecessary and unintended restriction over time.

With respect to what constitutes a "material relationship" between a small business and a large investor Aloha submits that, if the concept is to be used at all, the most sensible approach is to very broadly define "material relationship," but provide that it is relevant only to entities over a given revenue cap, as discussed above.

With respect to the question of eligibility of non-carriers, Aloha submits that it would be both impractical and inequitable to single out existing wireless carriers for eligibility restrictions. After all, many of those carriers are in part responsible for current vibrant and competitive state of the wireless industry. Thus, if a revenue cap is to apply to investors of DEs, it should apply across the board to both new and existing wireless carriers.

With respect to the proposal for a net worth cap on individuals, that too seems both unnecessary and impractical. It is impractical because it is very difficult to measure and it would seem to eliminate many entrepreneurs who have been successful in wireless to date – and are the ones who can make a DE program work. It is unnecessary because, regardless of whether one's net worth is one million dollars or one hundred million dollars, he is "small" by virtue of the investment needed for wireless today.

Aloha strongly supports the Council Tree proposal that a third bidding credit level be added. Aloha submits that it should be at least 40%, and should be applicable to all applicants having less than one million dollars in attributable average annual revenues. In this regard, with the absence of any closed bidding, this greater credit is needed to permit designated entities to compete generally with larger carriers. Moreover, although closed bidding is not now applicable for the AWS Auction, the Commission should clarify that this is a viable option for future auctions – especially if other DE provisions do not provide adequate protection to permit designated entities to have meaningful success in the auction.

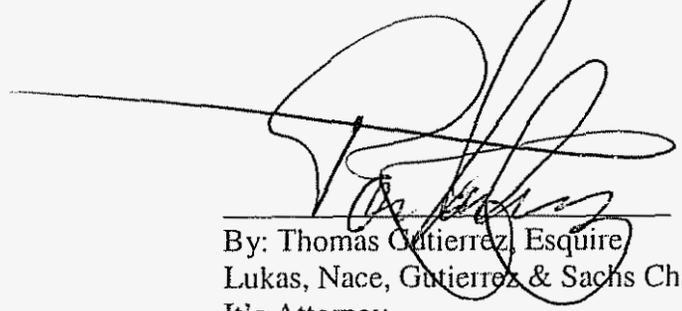
Lastly, with respect to the Council Tree urging that the unjust enrichment rules be expanded to guard against future impermissible future relationships, Aloha submits that existing protection already exists on this issue and that no increased regulation is needed or appropriate.

III. CONCLUSSION

The changes as discussed above will serve to strengthen the existing DE program without undermining the many benefits of the program. The Commission should adopt those changes, but not undertake a more wholesale change in its program.

Respectfully Submitted,

ALOHA PARTNERS, L.P.



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